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IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

No. 353

SMITH-JOHNSON STEAMSHIP CORP., *Petitioner,*

v.

UNITED STATES OF AMERICA.

On Petition for a Writ of Certiorari to the United States Court of Claims

PETITIONER'S REPLY TO BRIEF IN OPPOSITION

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The Government's brief in opposition to certiorari is based largely upon a misconception of the question presented by the petition and petitioner's contentions with respect thereto.

This Court in *Sword Line* v. *United States,* 351 U.S. 976, decided that a claim like this one is enforceable in admiralty, and petitioner does *not,* as the Government repeatedly asserts (Brief in Opposition, at pp. 1, 7, 8), seek a review of that decision.

The question presented by the Petition was not decided or involved in the *Sword Line* case. It is:

> "Does the Court of Claims have jurisdiction over a suit against the United States based upon Section 5 of the Merchant Ship Sales Act of 1946

> and Section 709 (a) of the Merchant Marine Act, 1936, under 28 U.S.C. § 1491, which provides: 'The Court of Claims shall have jurisdiction to render judgment upon any claim against the United States founded either upon the Constitution or any Act of Congress[1] . . . ,' in a case where suit might have been brought upon the same claim in the District Court under the Act of March 9, 1920, known as the Suits in Admiralty Act." (Pet. 2)

Petitioner contends that the Court of Claims has such jurisdiction because it was given it in direct terms by Congress in 28 U.S.C. § 1491. Cf. *United States* v. *Atlantic Mutual Insurance Co.*, 298 U.S. 483.[2]

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[1] Petitioner and the Government are agreed, in Government counsel's words to the court below, that this suit is "indisputably founded on the indicated Acts of Congress." (R. 539; see also Pet. 3-4 note 2.)

[2] In the *Atlantic Mutual Insurance Co.* case, the Court, after sustaining the jurisdiction of the Court of Claims under the Tucker Act, held that the suit (filed in 1929) was time-barred under the six-year statute of limitations because the claim arose in 1919 and not, as the Court of Claims had decided, in 1928. Since the Public Vessels Act did not become effective until 1920, the Government implies that this decision holds that the Court of Claims had jurisdiction only because the admiralty court lacked jurisdiction at the time the claim accrued. (Brief in Opposition 6, note 1) But this Court did not base its decision upon this ingenious rationalization. It plainly said that the Court of Claims had jurisdiction under the Tucker Act because:

> "It in direct terms invests the Court of Claims with jurisdiction to hear and determine all claims against the United States founded—
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> 'upon any contract, express or implied, with the government of the United States, or for damages, liquidated or unliquidated, in cases not sounding in tort, in respect of which claims the party would be entitled to redress against the United States either in a court of law, equity, or admiralty if the United States were suable.' " 298 U.S., at 490.

The Government contends that the jurisdiction of the Court of Claims should not depend (as 28 U.S.C. § 1491 provides) upon whether the claim is based "on a statute." It argues that it would be "far more workable" to establish a rigid "line of demarcation between the Suits in Admiralty Act and the Tucker Act." (Brief in Opposition 8)

The present claim is within the jurisdiction of the Court of Claims because it is admittedly founded on Acts of Congress, and 28 U.S.C. § 1491 invests the Court of Claims with jurisdiction "to render judgment upon *any* claim against the United States founded either upon the Constitution or *any* Act of Congress . . ." (Emphasis supplied).

It is also within the jurisdiction of the District Court because it seeks to recover "unjust enrichment from a maritime contract" and the Suits in Admiralty Act (46 U.S.C. § 742) invests the District Court with jurisdiction to render judgment on any such claim. *Sword Line* v. *United States,* 351 U.S. 976.

Petitioner submits that Congress has given it a choice of procedural remedies against the Government similar to that which has always been recognized in analogous circumstances in suits between private parties. Cf. *United States* v. *Atlantic Mutual Insurance Co.,* 298 U.S., at 489; *Keifer & Keifer* v. *Reconstruction Finance Corp.,* 306 U.S. 381, 395; 3 Story Com. Const. (1833) § 1666, note (5th ed., 1891). When Congress consented, without qualification, in 28 U.S.C. § 1491, to suit against the United States in the Court of Claims upon *any* claim founded upon *any* Act of Congress it ought not to be assumed, in the absence of the most compelling reasons of policy, that the effect is the same as though Congress had expressly limited

its consent to claims on which suit could not be brought in the District Court under the Suits in Admiralty Act. Cf. *Keifer & Keifer* v. *Reconstruction Finance Corp.*, 306 U.S., at 395-96.

There are no such reasons of policy in this case. The substantive question involved is the right to recover from the Government illegal exactions made by Government officials in violation of the acts of Congress under the supposed authority of which they purport to act. This type of litigation is usually determined in the Court of Claims and not in the District Court.[3] The case therefore is unlike *Johnson* v. *Fleet Corp.*, 280 U.S. 320, and *Matson Navigation Co.* v. *United States*, 284 U.S. 352, where the nature of the questions presented was such as to make it desirable that the controversies be determined by judges experienced in admiralty.[4] Here, the strained construction of the Tucker Act, which the Government suggests, would force the diversion of this type of litigation

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[3] The law with respect to such claims was developed largely in the Court of Claims under the jurisdiction granted to it in the Tucker Act to determine claims against the Government founded, as this one is, upon an Act of Congress. *Dooley* v. *United States*, 182 U.S. 222; *United States* v. *Emery, Bird, Thayer Realty Co.*, 237 U.S. 28; *United States* v. *New York & Cuba Mail Steamship Co.*, 200 U.S. 488; *United States* v. *Hvoslef*, 237 U.S. 1. For a collection of cases, see *Clapp* v. *United States*, 127 C. Cls. 505.

[4] The material differences between the facts in this case and the facts in the four cases considered in the opinion in *Johnson* v. *Fleet Corp.*, 280 U.S. 320, are sufficiently pointed out on pp. 9 and 10 of the Petition. There are similar differences between the facts in this case and those in *Matson Navigation Co.* v. *United States*, 284 U.S. 352. The *Matson* case (a suit involving the interpretation of a charter party) depended, like the cases considered in *Johnson* v. *Fleet Corp.*, entirely upon the principles of maritime law. There were therefore strong reasons of policy, not present in this case, why it should be decided by judges expe-

from judges more experienced to judges less experienced in deciding the controversies involved. Cf. *Calmar Steamship Corp.* v. *United States,* 345 U.S. 446, 455.

The modern judicial tendency is to free the jurisdiction of the courts from hobbling restrictions based upon "a sterile theory of judicial separatism." *Swift & Co.* v. *Compania Colombiana,* 339 U.S. 684, 694.[5]

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rienced in admiralty. (Cf. *Calmar Steamship Corp.* v. *United States,* 345 U.S. 446, 455).

It is also material that at the time the *Matson* case was decided, the injured party could, and in the *Matson* case did, sue the United States on the same claim simultaneously in the District Court under the Suits in Admiralty Act and in the Court of Claims under the Tucker Act. The determination of jurisdiction, therefore, had no more significance than a determination of venue. At the present time, however, an injured party cannot sue simultaneously in both courts. 28 U.S.C. § 1500. See *Calmar Steamship Corp.* v. *United States,* 345 U.S. 446, 455, note 7. The denial of jurisdiction, therefore, in the forum he has chosen may effectively bar any hearing whatsoever on the claim. Cf. *Davis* v. *Department of Labor,* 317 U.S. 249, 254.

[5] This has been particularly apparent with respect to admiralty jurisdiction.

In *The Genesee Chief,* 12 How. 443, this Court overrruled *The Thomas Jefferson,* 10 Wheat. 428, so as to hold that admiralty jurisdiction depended on the navigable character of the waters, not upon the ebb and flow of the tide; in *The Belfast,* 7 Wall. 624, this Court overruled *Allen* v. *Newbury,* 21 How. 244, so as to hold that admiralty jurisdiction extended to transportation on navigable waters wholly within a state. See also *Swift & Co.* v. *Compania Colombiana,* 339 U.S. 684, which held that admiralty did not lack jurisdiction to set aside a fraudulent transfer made to avoid a maritime attachment, and *Archawski* v. *Hanioti,* 350 U.S. 532, which held, contrary to a line of lower court authority, that admiralty might grant relief because of unjust enrichment under a maritime contract. See also Chief Judge Clark's opinion on reargument in *Sword Line, Inc.* v. *United States,* 230 F. 2d 75, 76.

The Government insists that such an emancipation of admiralty jurisdiction must be accompanied by an offsetting restriction upon the jurisdiction of the Court of Claims, based upon the same sterile theory. The application of the Government's formula would, as we pointed out in the Petition (pp. 18-22), result in a situation very like that considered in *Davis* v. *Department of Labor,* 317 U.S. 249. At the threshold of any case in which a vessel owned or operated by the Government might be even remotely involved, the question would necessarily arise as to whether an expanding conception of admiralty jurisdiction had operated to divest the Court of Claims of the jurisdiction it apparently had under the direct terms of the Tucker Act.[6] There should be compelling reasons of

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[6] We do not agree with the Government that such a determination could readily be made. As this Court recognized in *Archawski* v. *Hanioti,* 350 U.S. at 534, a line of lower court authority had held prior to the determination of that case that admiralty had no jurisdiction over a claim based on unjust enrichment, and the Solicitor General assumed (as we pointed out, Pet. 21, note 13) in his petition for certiorari in *Southeastern Oil Florida* v. *United States* (*denied*, 348 U.S. 834), that the Court of Claims had jurisdiction over a claim like this one. The Government's present argument that

> "In each of the cases cited by petitioner (Pet. 16-17) [as examples of cases where jurisdiction would be doubtful under the Government's formula], jurisdiction under the Suits in Admiralty and Public Vessels Acts was lacking" (Brief in Opposition, 8-9)

would be more persuasive had not the Government moved in the Court of Claims to dismiss two of these cases (*D. C. Andrews & Co.* v. *United States,* 129 C. Cls. 574, and *Compania Ithaca de Vapores, S.A.* v. *United States,* 129 C. Cls. 745) on the ground that the District Court had exclusive jurisdiction over them under the Suits in Admiralty Act.

policy, and the Government suggests none, why so mutilating a restriction should be read into the jurisdictional statute as to require the courts to conduct an unrewarding inquiry into the relative abstract attractions of jurisdictional theories unrelated either to the nature of the controversy, the purpose of Congress, or the language it used in waiving sovereign immunity. Cf. *Davis* v. *Department of Labor,* 317 U.S. 249. We suggest that this Court did not refuse in *Sword Line, Inc.* v. *United States,* 351 U.S. 976, *Swift & Co.* v. *Compania Colombiana,* 339 U.S. 684, and *Keifer & Keifer* v. *Reconstruction Finance Corp.,* 306 U.S. 381, to perpetuate the rigid formalism of the past only, as the Government implies, to fasten upon the courts a new formalism no less restrictive.

CONCLUSION

For these reasons, it is respectfully submitted that the writ should be granted.

Respectfully submitted,

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